



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220223-0055]

RIN 0648-BK73

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pink Shrimp and Midwater Trawl Exemptions to Vessel Monitoring System Requirements for the West Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule revises monitoring provisions that specify exemptions for non-groundfish trawl vessels participating in the Pacific coast pink shrimp fishery and for groundfish midwater trawl vessels. In a final rule on vessel movement, monitoring, and declaration management for the Pacific coast groundfish fishery published on June 11, 2020, vessels in the pink shrimp trawl fishery were incorrectly included with other open access non-groundfish trawl vessels that became subject to a higher position transmission rate on their NMFS type-approved vessel monitoring system (VMS) units. This final rule corrects the error and returns the required transmission rate for vessels in the pink shrimp trawl fishery to once every 60 minutes, as recommended by the Pacific Fishery Management Council (Council). This action also corrects a citation error in the VMS regulations with regards to exemptions for midwater trawl vessels, as well as a typographical error in the trawl fishery prohibitions.

DATES: Effective [*Insert date 30 days after date of publication in the Federal Register*].

ADDRESSES: Copies of the analytic document supporting this action, are available via the Federal eRulemaking Portal: <https://www.regulations.gov>, docket NOAA–NMFS–2021-0085, or by contacting the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Matt Dunlap, Fishery Policy Analyst, 206-526-6019, or matthew.dunlap@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2020, NMFS published a final rule on vessel movement, monitoring, and declaration management that revised reporting and monitoring provisions for vessels participating in the Pacific coast groundfish fishery (85 FR 35594). The rule increased the vessel position frequency to improve NMFS’s ability to enforce fishing activity around restricted areas. The rule required an increase in the position transmission rate from once every 60 minutes to once every 15 minutes for groundfish vessels using NMFS type-approved VMS units. This increase in frequency produces more course, location, and speed data to improve NMFS’s ability to identify whether vessels are continuously transiting in restricted areas or not. The Council discussed and recommended an exemption to the increased transmission rate for vessels fishing in the pink shrimp trawl fishery because this fishery is not subject to restrictions against trawling in Rockfish Conservation Areas (RCAs) and because the Council and NMFS Office of Law Enforcement did not have concerns with enforcing pink shrimp trawling restrictions in Essential Fish Habitat (EFH) Conservation Areas. However, the exemption for pink shrimp trawl vessels was inadvertently not included in the original proposed or final rule. This final rule adds the exemption to the increased ping rate for pink shrimp trawl vessels, corrects a citation error in the midwater trawl exemption at 50 CFR

660.14(d)(3)(ii)(B), and corrects a typographical error in the prohibitions section of the trawl fishery regulations at 50 CFR 660.112(b)(1)(x).

Between September 2014 and April 2016, the Council developed and considered management measures to address a range of vessel and gear movement issues and aggregated these issues under a single vessel movement monitoring agenda item. Additional details about the Council's considerations are included in the Council's analytical document (see **ADDRESSES**). The Council's public scoping document includes several references to making an exemption for the increase in ping rate for pink shrimp trawl vessels, specifically in Section 1.5.6.

During the development of the management measures for the Vessel Movement and Monitoring Rule finalized in 2020, the Council noted that the pink shrimp fishery was required to maintain a VMS unit at a ping rate of one per hour. This ping rate is sufficient to allow enforcement of the closed EFH Conservation Areas that vessels in this fishery are subject to. The Council considered that there are no restrictions for the pink shrimp trawl fishery from fishing in RCAs and that a vessel is required to declare the type of gear being used for each trip, which verifies its authorization to fish in the RCA. Therefore, the Council decided that additional monitoring for vessels participating in the pink shrimp trawl fishery is not necessary.

Summary of the Regulatory Changes

This section discusses the regulatory revisions that will carry out the Council's recommendation. The regulatory changes in this final rule are identical to the regulatory changes specified in the proposed rule published on October 26, 2021 (86 FR 59109).

This final rule:

- Restores the position transmission rate requirement of once every 60 minutes for vessels participating in the pink shrimp trawl fishery;

- Corrects a citation in the ping rate exemption for midwater trawl fishing vessels at 50 CFR 660.14(d)(3)(ii)(B); and
- Corrects a typographical error in the prohibitions section of the trawl fishery regulations at 50 CFR 660.112(b)(1)(x).

These revisions relieve vessels participating in the pink shrimp fishery from the added burden of more frequent position transmissions, consistent with the Council's recommendation and clarify a cross-citation from the previous rulemaking on this issue.

Comments and Responses

NMFS received one comment letter during the comment period for the proposed rule. The comment letter came from Oceana, an environmental organization, and can be viewed along with the proposed rule and supporting documents for this action at www.regulations.gov. Following are the specific comments in the comment letter, along with the response to each:

Comment 1: Oceana opposed the rule based on the statement in the proposed rule that pink shrimp trawlers do not have restrictions on where they can trawl.

Response: NMFS clarifies that pink shrimp trawlers do have restrictions on where they can trawl, including EFH Conservation Areas, as well as state conservation areas. NMFS does not enforce state regulations within state waters, including trawling within a state conservation area, though NMFS would refer observed violations to the appropriate agency. NMFS does enforce the appropriate federal regulations, including VMS carriage and declaration requirements. However, as the proposed rule stated, pink shrimp trawlers do not have restrictions against trawling in RCAs, the largest of the groundfish closed areas. The Council decision documents establishing the Alternatives for the Vessel Movement and Monitoring Rule from November 14-15, 2015, and the decision document for the Final Action on Regulations for Vessel Movement Monitoring (VMM) from April 9-14, 2016, include an exemption for pink shrimp trawl vessels from the increased VMS

ping rate because the Council determined that the higher ping rates were not necessary for enforcing the EFH Conservation Area closures for pink shrimp vessels, and because vessels in this sector are not held to the scale of closed areas that other vessels in Federal fisheries off the West Coast are held to.

Comment 2: Oceana contends that the higher ping rate is necessary to enforce pink shrimp trawling restrictions in EFH Conservation Areas and state conservation areas.

Response: The Council recommended, and NMFS agrees, that the higher ping rate is not necessary to enforce pink shrimp trawl restrictions in EFH Conservation Areas. NMFS found no history of concern with enforcement of trawling by pink shrimp vessels in EFH Conservation Areas or state conservation areas. While NMFS may refer violations observed in state conservation areas to the appropriate agency, the Federal requirements for VMS and declarations are not used to enforce trawling in state conservation areas.

Comment 3: Oceana commented that NMFS should expand its use of enhanced electronic monitoring systems, including gear sensors that can indicate when fishing activity is occurring and Global Positioning Satellites units that can make detailed and accurate records of vessel positions.

Response: NMFS encourages all fishery stakeholders, including the Fishery Management Councils, to consider implementing electronic technology (ET) options where appropriate to meet science, management, and data needs. NMFS released a national Policy on Electronic Technologies and Fishery-dependent Data Collection in 2013 to provide guidance on the implementation of ET solutions and in fisheries. An updated policy was released in May 2019. In 2015, NMFS implemented regional ET implementation plans informed by a series of national-level planning documents. These plans were created to help move beyond pilot projects by identifying, evaluating, and

prioritizing implementation of promising ET in specific fisheries around the country. We recently updated these plans, highlighting the lessons learned from the last four years and looking forward to 2024.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish Fishery Management Plan (FMP), other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS considered the data, views, and comments received during the public comment period.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866. As this rule is correcting an oversight in an earlier rule and would result in no change to the status quo for regulated entities, there are not expected to be any economic or regulatory impacts on these entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: February 24, 2022.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.14, revise paragraph (d)(3)(ii)(B) and add paragraph (d)(3)(ii)(D) to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(B) *Midwater trawl exemption.* If a limited entry trawl vessel is fishing with midwater trawl gear under declarations in § 660.13(d)(4)(iv)(A), the mobile transceiver unit must transmit a signal at least once every hour.

* * * * *

(D) *Pink shrimp trawl exemption.* If a vessel is fishing for pink shrimp using non-groundfish trawl gear under declarations in § 660.13(d)(4)(iv)(A), the mobile transceiver unit must transmit a signal at least once every hour.

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3. In § 660.112, revise paragraph (b)(1)(x) to read as follows:

§ 660.112 Trawl fishery – prohibitions.

* * * * *

(b) * * *

(1) * * *

(x) Use midwater groundfish trawl gear outside the Pacific whiting IFQ fishery primary season dates as specified at § 660.131(b).

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